

Trudeau, Ford Announce Initial Details of Rental Assistance to Commercial Tenants

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The emergency declaration in Ontario and other governmental restrictions, coupled with the ongoing wave of COVID-19, have forced business owners to make difficult decisions, and in some cases, shut down. One of the biggest issues facing businesses is the payment of rent, which often constitutes their most significant expense. Tenants' cash flow issues and inability to make rental payments (or full rental payments) in turn prevents landlords from keeping up with their own expenses.

On April 16, 2020 Prime Minister Justin Trudeau introduced the **Canadian Emergency Commercial Rent Assistance (CECRA)** program to help landlords and tenants weather the impact of the COVID-19 pandemic. At that time, program details were limited because the federal government was still in the process of negotiating the CECRA program with the provinces and territories, who would be backing the program as partners.

On April 24, 2020, Trudeau announced further details of the CECRA program:

- the program will be administered and delivered by the Canada Mortgage and Housing Corporation (CMHC) based on a collaboration between the federal, provincial and territorial governments. The Government of Ontario has committed to contribute \$241 million towards the program;
- the government will offer forgivable loans to qualifying commercial landlords to cover 50% of the monthly rent payable by eligible tenants for the months of April, May and June 2020. The forgivable loans would be disbursed directly to the mortgage lender;
- these loans will be forgiven if the landlord agrees to reduce the eligible tenants' rent by at least 75% for the three months of the agreement. The tenant would be responsible for covering 25%, the landlord 25%, and the federal government and provinces would share the remaining 50%. The Ontario government has said that this type of rent sharing agreement would apply only to before profit costs (i.e. to "fixed" costs);
- the landlord must also pledge to not evict the tenant while the agreement is in place;
- commercial landlords who have not offered rent reductions of at least 75% for April and May will be able to do so retroactively to qualify for CECRA;
- landlords who do not have a mortgage on their property are encouraged to contact CMHC to discuss program options, which may include other forms of debt relief or funds to cover fixed cost payment obligations such as utilities.

Eligible tenants for the purposes of CECRA are:

- Small business tenants who are paying less than \$50,000 per month in rent and who have temporarily ceased operations or experienced a drop of at least 70% in revenues. A business' decrease in revenues is determined by comparing revenues in April, May or June to the same month in 2019 or to average revenues in January and February 2020. While Industry Canada defines small-sized businesses as those with between five and 100 paid employees, it is unclear if the CECRA program will

follow a similar definition.

- Non-profit and charitable organizations are also considered eligible tenants.
- Further details about rent relief for larger tenants who do not meet these criteria will be announced at a later date.

The CECRA program is not mandatory and does not impact the ability of landlords and tenants to reach alternate agreements.

The federal government anticipates that CECRA will be operational by mid-May and the program will be available until September 30, 2020.

Outstanding Questions: Despite today's announcement of further program details, there remain many outstanding questions about the structure and administration of the CECRA program, including:

- No evictions – presumably this is limited to termination of the lease for non-payment of rent, though it is unclear if it would preclude a landlord from terminating for non-rent defaults or pursuant to other contractual rights under the lease. What if the tenant fails to pay its 25%?
- Is the \$50,000 rent threshold inclusive or exclusive of HST? Is it based on only minimum/net rent or gross rent? If gross, will it be based on current estimates for additional rent? What happens if later reconciliations drop the number below \$50,000?
- Is the landlord obligated to verify the tenant's 70% decline in revenues? To whom does the tenant have to demonstrate this decline? Will the government later be auditing applicants?
- Will landlords be restricted from suing for arrears while agreement is in place (for pre-existing arrears or if the tenant fails to pay the 25%)?
- What if the lease has already been terminated? Can the parties reinstate it and take the benefit of this program?
- What if the parties have already agreed on a rent deferral agreement for these months – is the \$50,000 rent threshold based on pre-deferral or post-deferral amounts?
- How is before-profit rent to be calculated for the purpose of a rent sharing agreement under the program? Are the landlord's administration costs considered to be before profit rent?

Please continue to check this article as we will be updating it as more information on CECRA becomes available.

Landlords and tenants should also be aware of other government emergency relief programs to help them weather the economic impact of COVID-19:

The federal government has invested more than \$70 billion into programs designed to help organizations cover their payroll expenses:

- The Canada Emergency Wage Subsidy (CEWS) provides a subsidy of up to 75% for eligible employee wages between March 15, 2020 and June 6, 2020. To be eligible for CEWS, an employer must experience a year-over-year drop in revenues of 15% in March 2020 or 30% in April or May 2020.
- The Temporary Business Wage Subsidy may be available for those who are not eligible for CEWS. This program provides a 10% wage subsidy between March 18, 2020 and June 19, 2020 with a maximum subsidy of \$1,375 per employee and a maximum of \$25,000 per employer.
- The National Research Council's IRAP Innovation Assistance Program provides wage subsidies to some small and medium-sized employers pursuing technology-driven innovation who are ineligible for CEWS. The subsidies cover up to 80% of salaries and 50% of contractor costs for a period of up to 12 weeks.
- The maximum length of Work-sharing plans has been extended to 76 weeks. Work-sharing plans provide EI benefits to groups of employees who have experienced a reduction of work hours of at least 10% for reasons outside the control of their employers. Putting in place a work-sharing plan involves an agreement between the employer, the affected employees and Service Canada.

- Canada Summer Jobs Program has been modified, including increasing the wage subsidy to 100% of the provincial/territorial minimum wage and extending the end date for employment from August 28, 2020 to February 28, 2021.

Businesses and non-profits can take advantage of relief measures from all three levels of government with regards to taxes, utilities and other fees:

- The filing date for corporations/individuals has been extended to June 1, 2020 and corporations/individuals can defer payment of any income tax amounts until September 1, 2020 with respect to any income tax that becomes owing between March 18, 2020 and August 31, 2020.
- Due dates for GST/HST payments as well as customs duty owing have been deferred to June 30, 2020. The deadline for businesses to file their returns is unchanged, however, the CRA will not impose penalties where a return is filed late provided that it is filed by June 30, 2020.
- The Government of Ontario is providing temporary 45-day emergency relief by applying the off-peak rate of 10.1¢ per kWh at all times beginning March 24, 2020. In addition, Toronto Hydro has extended its current suspension of electricity disconnections until July 31, 2020.
- The Government of Ontario is not applying any penalties or interest on late-filed returns or incomplete or late tax payments between April 1, 2020 and August 31, 2020 under select provincially administered taxes such as Employer Health Tax, Tobacco Tax and Gas Tax.
- For 2020, the Government of Ontario is increasing the amount of initial payroll expenses exempted from the Employer Health Tax (EHT) from \$490,000 to \$1 million. This amounts to relief of up to \$9,945.
- Working in conjunction with the Government of Ontario, the Workplace Safety and Insurance Board will allow employers to defer payments to August 31, 2020.
- The City of Toronto will suspend all pending automated withdrawals of property taxes for 60 days. The City is providing a grace period for payments and payment penalties for 60 days, starting March 16, 2020.
- The City of Toronto is also extending the due date for all utility bills by adding 60 days to the standard due date of 21 days after the billing date.

Finally, the federal government is working to improve access to capital:

- The Government of Canada is guaranteeing loans of up to \$40,000 for businesses and non-profits with between \$20,000 and \$1.5 million in payroll expenses in 2019. The Canada Emergency Business Account loans are interest free and there are no minimum monthly principal payments until December 31, 2022. However, if \$30,000 is fully repaid on or before December 31, 2022, the remaining \$10,000 will be forgiven.
- Export Development Canada (EDC) is working with private sector lenders to coordinate on credit solutions for individual businesses. The EDC loan guarantee allows financial institutions to issue operating credit and cash flow term loans of up to \$6.25 million to existing clients who are small and medium-sized businesses, with 80 percent guaranteed by EDC and to be paid within one year.

Business Development Bank of Canada (BDC) is working with private sector lenders to coordinate on credit solutions for individual businesses. BDC is working with financial institutions to co-lend term loans to small and medium-sized enterprises for amounts of up to \$6.25 million (80% of financed amount provided by BDC and the remaining 20% by our financial institution). The loans are interest free for the first 12 months and have a 10-year repayment period.

Should you have any questions about CECRA, the emergency relief programs being offered by the government or any landlord-tenant matters during this difficult time, please contact one of the lawyers in our [Commercial Leasing Practice Group](#) and we would be pleased to assist you.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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